102D CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
102-124

FEDERAL EMPLOYEE REDUCTION-IN-FORCE NOTIFICATION ACT

JUNE 24, 1991.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. CLAY, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany H.R. 1341]

[Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 1341) to amend title 5, United States Code, to require that a Federal employee be given at least 60 days written notice before being released due to a reduction in force, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employee Reduction-in-Force Notification Act".

SEC. 2. NOTICE REQUIREMENTS.

Section 3502 of title 5, United States Code, is amended by adding at the end the following:

"(d)(1) Except as provided under subsection (e), an employee may not be released, due to a reduction in force, unless—

"(A) such employee and such employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (2), at least 60 days before such employee is so released; and

"(B) if the reduction in force would involve the separation of a significant number of employees, the requirements of paragraph (3) are met at least 60 days before any employee is so released.

"(2) Any notice under paragraph (1)(A) shall include—

"(A) the personnel action to be taken with respect to the employee involved;

"(B) the effective date of the action;

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"(C) a description of the procedures applicable in identifying employees for release;

"(D) the employee's ranking relative to other competing employees, and how that ranking was determined; and

"(E) a description of any appeal or other rights which may be available.

"(3) Notice under paragraph (1)(B)—

"(A) shall be given to—

"(i) the appropriate State dislocated worker unit or units (referred to in section 311(b)(2) of the Job Training Partnership Act); and

"(ii) the chief elected official of such unit or each of such units of local government as may be appropriate; and

"(B) shall consist of written notification as to—

"(i) the number of employees to be separated from service due to the reduction in force (broken down by geographic area or on such other basis as may be required under paragraph (4));

"(ii) when those separations will occur; and

"(iii) any other matter which might facilitate the delivery of rapid response assistance or other services under the Job Training Partnership Act.

"(4) the Office shall prescribe such regulations as may be necessary to carry out this subsection. The Office shall consult with the Secretary of Labor on matters relating to the Job Training Partnership Act.

"(e)(1) Subject to paragraph (3), upon request submitted under paragraph (2), the President may, in writing, shorten the period of advance notice required under subsection (d)(1) (A) and (B), with respect to a particular education in force, if necessary because of circumstances not reasonably foreseeable.

"(2) A request to shorten notice periods shall be submitted to the President by the head of the agency involved, and shall indicate the reduction in force to which the request pertains, the number of days by which the agency head requests that the periods be shortened, and the reasons why the request is necessary.

"(3) No notice period may be shortened to less than 30 days under this subsection.".

SEC. 3. APPLICABILITY.

The amendment made by section 2 shall apply with respect to any personnel action taking effect on or after the last day of the 90-day period beginning on the date of enactment of this Act.

EXPLANATION OF COMMITTEE AMENDMENT

The committee amendment to H.R. 1341 substitutes a new text for the text of the introduced bill. The explanation of the substitute text is contained in the explanation of the bill as set forth hereinafter in this report.

PURPOSE

The purpose of H.R. 1341 is to require that a Federal employee be given at least 60 days' written notice before being released due to a reduction in force (RIF). The bill also requires notification to the State dislocated worker unit and the chief elected official of the local government when a significant RIF occurs. The bill also grants authority to the President to shorten the notification period in situations considered not reasonably foreseeable.

COMMITTEE ACTION

H.R. 1341 was introduced on March 7, 1991 by the Honorable Paul E. Kanjorski.

The Subcommittee on Human Resources held a series of hearings on reductions in force in general during the 101st Congress. On April 18, 1991, the subcommittee held a hearing on H.R. 1341 (Hearing No. 102-8). Testimony was presented by Mr. Franklin Frazier, United States General Accounting Office; Mr. Bernard L.

Ungar, General Accounting Office; Mr. Leonard R. Klein, Office of Personnel Management; Mr. Robert Tobias, National Treasury Employees Union; Mr. Paul Trayers, Federal Managers Association, Mr. Mark Roth, American Federation of Government Employees; Mr. Josh Neiman, National Federation of Federal Employees; and Mr. Chris Sullivan, National Association of Government Employees.

On June 5, 1991, the Subcommittee on Human Resources approved H.R. 1341 for full committee consideration with an amendment in the nature of a substitute.

On June 12, 1991, the Committee on Post Office and Civil Service, by a vote of 22–1 and with a quorum present, ordered H.R. 1341 favorably reported after agreeing to the substitute amendment which had been adopted by the subcommittee.

SUMMARY OF H.R. 1341

H.R. 1341, as amended by the committee, requires that Federal employees who are going to be released due to an RIF be given at least 60 days' written notice. The bill also requires that State dislocated worker units and local governments be given the same 60-day notice when a significant RIF occurs.

Section 2 of the bill, as amended, provides that an employee may not be released due to a reduction in force unless the employee and the employee's collective-bargaining representative (if any) are given 60 days' written notice. The notice shall include: (1) the personnel action to be taken with respect to the employee involved, (2) the effective date of the action, (3) a description of the procedures applicable in identifying employees for release, (4) the employee's ranking relative to other competing employees and how that ranking was determined, and (5) a description of any appeal or other rights which may be available.

The bill also provides that if a significant number of employees will be separated, a 60-day notice must also be given to the dislocated worker unit of the State where the RIF is taking place and the chief elected official of the unit or units of local government that would be adversely impacted by the RIF.

The notices to the dislocated worker unit and the local government official shall consist of the number of employees to be separated, when the separations will occur, and other information which might facilitate the delivery of assistance and services under the Job Training Partnership Act.

The President may, in writing, shorten the notice period with respect to a particular RIF because of circumstances not reasonably foreseeable. The request to shorten the notice period shall be submitted to the President by the head of the agency involved and shall indicate the number of days by which the period should be shortened and the reasons why the request is necessary. No notice period may be shortened to less than 30 days.

Section 3 provides that the notice period requirements shall apply to any personnel action taking effect on or after the last day of the 90-day period beginning on the date of enactment of this Act.

STATEMENT

Since the early 1980's concerns have grown regarding Federal reduction-in-force policy. Throughout the 1980's, domestic agencies have faced reductions in personnel. In December, 1988, the Department announced a proposal to close and realign a significant number of military installations and, subsequently, downsize the overall Department of Defense. The prospect of major reductions in civilian personnel at the Department of Defense, combined with the ongoing concerns generated by reductions at domestic agencies, has generated new questions about reductions in force, generally, and the need for earlier notice of impending layoffs, specifically.

PRIVATE SECTOR NOTIFICATIONS REQUIREMENTS

In 1988, the Congress enacted legislation requiring advance notice of significant closings and layoffs in the private sector. This legislation, the Worker Adjustment and Retraining Notification Act (WARN), Public Law 100–379, generally requires 60 days' advance notice of plant closings and mass layoffs. Particularly as a result of the renewed attention generated by the proposed closings of military installations, many feel that Federal employees and the communities in which they live should be provided advance notice of impending dislocations that is at least comparable to that provided to private sector workers pursuant to WARN.

The fact that an employee may have worked for the Federal government rather than for the private sector does alter the impact of dislocation on the employee, the employee's family, or the community in which the employee lives. Considerable research has been done on the issue of dislocation. Virtually everyone who has looked at the problems associated with dislocation has agreed on the importance of early notice to workers of impending dislocation.

The General Accounting Office (GAO) reviewed advance notification policy in its study entitled, "Plant Closings—Limited Advance Notice and Assistance Provided Dislocated Workers" (GAO 87–105). This study of private sector dvance notice practices between 1983 and 1984 found that "several major business associations and labor organizations agree that that wokers dislocated by closures and layoffs need time to adjust to the trauma of job loss and to help facilitate transition to reemployment." According to the study, advance notice:

1. provides time to plan and implement programs to help workers adjust to their dislocation and find reemployment;
2. increases worker participation in adjustment programs; and
3. improves the efficiency and effectiveness of adjustment programs by helping dislocated workers find comparable jobs more quickly.

In 1986, Secretary of Labor William Brock established a Task Force on Economic Adjustment and Worker Dislocation. In December, 1986, the task force issued a report entitled "Economic Adjustment and Worker Dislocation in a Competitive Society" in which it concluded:

1. Advance notice is an essential component of a successful adjustment program. A rapid response program (such as that provided in Title III of the Job Training Partnership Act) cannot be effec-

tive unless program officials are made aware of plant closings and large layoffs as soon as possible.

2. There is no evidence that the productivity of the work force is adversely affected during a notification period.

3. Longer periods of notice are preferable to shorter periods. Notice periods of only two or three weeks have a negligible effect on reducing the duration of unemployment of displaced workers.

In early 1986, the Congressional Office of Technology Assessment (OTA) undertook an analysis of the costs and benefits of advance notice. Among the conclusions of that study were:

1. The best time to begin an assistance program for dislocated workers is before the dislocation occurs because:

(i) it is earlier to enroll workers in adjustment programs before they are laid off;

(ii) it is earlier to enlist managers and workers as active participants in displaced worker projects before the closing or layoff;

(iii) with time to plan ahead, services to workers can be ready at the time of the layoffs, or before.

Advance notice is a necessary precondition in order for it to be possible to begin adjusting for the impending dislocation before the dislocation occurs.

2. Generally, a minimum of two to four months is required to put in place a comprehensive program of adjustment services.

3. Fears about declines in productivity or worker unrest after advance notice is given to workers have not been borne out in fact.

The Joint Committee on Science, Engineering, and Public Policy of the National Academies of Science and Engineering issued a report "Technology and Employment, Innovation and Growth in the U.S. Economy" that included the following findings:

1. The benefits of advance notice more than outweigh the costs.

2. Advance notice of as little as one month reduces the duration of unemployment among displaced workers by as much as 27%.

3. Workers who are not given advance notice of plant closings and layoffs suffer economic losses of $4,500 to $15,000 greater than dislocated workers who do receive notice.

Though most studies of the impact of advance notice have focused on the public policy advantages derived from such notice, the importance of notice to individuals cannot be overemphasized and should not be ignored. Early notice of impending dislocation provides what is frequently an essential buffer period that eases the trauma of the impending dislocation. It provides individual workers the opportunity to adjust financial plans and to get a head start on job hunting and/or retraining. In short, it provides essential information that is the difference between being able to control one's circumstances and being controlled by one's circumstances.

CURRENT REDUCTION-IN-FORCE REGULATIONS

H.R. 1341, as amended, would require Federal agencies to extend the period of advance notice given before a reduction in force. Presently, there are two types of notices by which agencies advise employees that a RIF is planned, a general notice and a specific notice. A general RIF notice simply alerts employees to the possi-

bility of a RIF at their agency. A specific RIF notice advises an individual that he or she will be affected by a RIF action.

Under current regulations, agencies must provide a general RIF notice to employees 30 days in advance of the proposed action but need not specifically advise employees of separation or other action until 10 days before the separtion or action. During subcommittee hearings on H.R. 1341, subcommittee Chairman Paul E. Kanjorski said that not informing an employee of a separation until 10 days before the separation "is unacceptable. The reason for advance notification is so that employees can receive the benefits of placement and training programs. Ten days is not sufficient."

While the committee is principally concerned that 30 days' notice is insufficient, the committee is also concerned that general notice is insufficient. General notice fails to provide employees necessary information with regard to their standing. In some cases, employees are misled into believing that their jobs are at risk when they really are not. In other cases, employees who realistically are at risk of being displaced do not take the notice seriously because of its lack of specificity regarding their individual circumstance. Experience has shown that workers frequently have difficulty adjusting to the reality of dislocation. Employees both deserve and need to be fully informed of their status. They should receive specific notice informing them of the proposed RIF, the potential impact of that action, including an explanation of the employee's bumping rights, and the types of assistance and training available to employees in the event separation is necessary.

NEED FOR ADVANCE NOTIFICATION

During the 101st Congress, the subcommittee held a hearing on reduction-in-force policy at the Norton Air Force Base in California (Hearing No. 101–65). Testifying before the subcommittee were representatives from the California State Employment Development Department and the City of San Bernardino Employment and Training Agency. These agencies are responsible for job services and retraining in local communities that are impacted by mass layoffs. Mr. Jim Curtis of the Job Training Partnership Division of the California State Employment Development Department stated:

> There is one specific problem in serving workers dislocated as a result of military base closures which I would like to bring to the Committee's attention. Workers affected by base closures are not eligible for JTPA service until they receive their actual notice of termination or layoff. However, the key to providing employment and training to dislocated workers is early intervention. Currently, workers who will be dislocated . . . are not eligible for services until they receive their termination notice. That is really hurting the program. We cannot bring participants into the program so that they can receive services early on, even within the 60-day time frame.

In April of 1991, the Subcommittee on Human Resources held a hearing on H.R. 1341, the Federal Employee Reduction-in-Force Notification Act. During that hearing, representatives of the General Accounting Office stated:

> Advance notice to workers and community leaders helps in getting reemployment assistance to dislocated workers when it will do the most good—before or at the time of layoff. Most Federal civilian organizations have adopted OPM regulations that require a minimum of 30 days' notice of a RIF. Based on our work and the research of others, 30 days would make the task of planning and implementing an effective assistance program prior to or at the time of layoff extremely difficult.

Debate similar to that which preceded the passage of the WARN Act has resurfaced with government management officials concerned with advance notice in the Federal sector. Management officials are concerned that extensive notice periods give employees a false sense of security that a miracle will occur and that the RIF would not be needed. The committee has required specific notice in part to address just this concern. These officials are also concerned that the 60-day notice will result in low morale, less productivity, more tardiness, increased absenteeism, and sabotage to facilities. The committee notes that many of these same concerns were expressed prior to enactment of WARN. Experience has shown that such concerns are largely unfounded and, as the National Academies of Science and Engineering report stated, the benefits of advance notice outweigh the costs. Further, as the GAO stated before the subcommittee, "longer time periods can also benefit management by allowing it to bring personnel records up to date, limit the number of resulting grievances and appeals, and better manage the RIF process generally."

Earlier notice also means that agencies must have sufficient RIF information so that they can perform the normal RIF procedures of identifying the specific employees who will be adversely affected. GAO representatives testified that "installation officials said shorter notice makes it more difficult to develop plans to deal with the impact of the RIF and to complete related paperwork for such things as severance pay calculations."

In some respects, Federal employees have a greater need for advance notice than do their private sector counterparts. As Mr. Robert Tobias, President of the National Treasury Employees Union, stated before the subcommittee:

> The current notification period was established over four decades ago under vastly different economic and labor market circumstances. Basic education and general job experience were once sufficient for displaced workers to find new and comparable employment. In the 1990's, specialized education, skill and experience specific to a given employer are often prerequisites for finding new employment. Fewer and fewer workers will be able to move to comparable employment following a layoff without training and placement assistance. The problem is particularly acute in the federal government. The average federal worker is 42 years old with over 13 years experience in government. Federal workers, for the most part, are long removed from the job market and often have worked only in jobs that are unique to government service. The very factors that

make these employees invaluable in their current government jobs—long experience and an intricate knowledge of a particular agency's operations—are the same factors that may preclude a rapid transition to new employment.

If Federal employees have a greater need for advance notice, the Federal government also has a greater ability to accommodate that need. Private companies, responding to rapidly changing economic needs, are limited in their ability to foresee events. Federal agencies, however, are typically aware of impending reduction-in-force actions well in advance of the date of employee release. Meeting a 60 days' notice requirement will not require any additional delay in the agency's planned reduction. To the extent that an agency may need to respond quickly to events that were not reasonably foreseeable, H.R. 1341, as amended, authorizes the President to waive the 60 days' notice requirement.

Section Analysis

SECTION 1. SHORT TITLE

Section 1 provides that this Act may be cited as the "Federal Employee Reduction-in-Force Notification Act."

SECTION 2. NOTICE REQUIREMENTS

Section 2 of the bill, as amended by the Committee, amends section 3502 of title 5, United States Code, by adding new subsections (d) and (e).

Subsection (d)(1)(A) of section 3502 provides that an employee may not be released due to a reduction in force unless the employee and the employee's exclusive collective-bargaining representative (if the employee is so represented) are given written notice at least 60 days before the employee is so released.

Subsection (d)(1)(B) of section 3502 provides that if the reduction in force would involve the separation of a significant number of employees, the requirements of subsection (d)(3) must be met at least 60 days before any employee is released. It is the intent of the Committee that the term "significant number of employees" be construed to mean at least 50 employees.

Subsection (d)(2) of section 3502 provides that the notice provided to employees under subsection (d)(1)(A) shall include (A) the personnel action to be taken with respect to the employee involved; (B) the effective date of the action; (C) a description of the procedures applicable in identifying employees for release; (D) the employee's ranking relative to other competing employees and how that ranking was determined; and, (E) a description of any appeal or other rights that may be available.

Subsection (d)(3) provides that the notice required under subsection (d)(1)(B) shall be given to (i) the appropriate State dislocated worker unit or units referred to in the Job Training Partnership Act; and (ii) the chief elected official of each unit of local government as may be appropriate.

Subsection (d)(3) further provides that such notice shall consist of written notification as to (i) the number of employees to be separated broken down by geographic area or on any other basis pre-

scribed by regulation; (ii) when the separations will occur; and, (iii) any other matter which might facilitate the delivery of rapid response assistance or other services under the Job Training Partnership Act.

Subsection (d)(4) requires the Office of Personnel Management to prescribe such regulations as may be necessary to carry out the provisions of subsection (d) of section 3502.

Subsection (e)(1) provides that, upon request, the President may, in writing, shorten the notice period required under subsection (d)(1) (A) and (B), if necessary because of circumstances not reasonably forseeable. The Committee believes that such circumstances clearly would include a national emergency or an unforseen reduction in annual appropriations.

Subsection (e)(2) provides that a request to shorten a notice period must be submitted to the President by the agency head involved and shall include the number of days by which the agency head requests that the period be shortened, and the reasons why the request is necessary.

Subsection (e)(3) provides that no notice period may be shortened to less than 30 days.

SECTION 3. APPLICABILITY

Section 3 provides that the amendment made by section 2 shall apply with respect to any personnel action taking effect on or after the last day of the 90-day period beginning on the date of enactment of this Act.

COST

The cost estimate prepared by the Congressional Budget Office pursuant to sections 308(a) and 403 of the Congressional Budget Act of 1974, as amended, is set forth below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 17, 1991.

Hon. WILLIAM L. CLAY,
Chairman, Committee on Post Office and Civil Service,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1341, the Federal Employee Reduction-in-Force Notification Act, as ordered reported by the House Committee on Post Office and Civil Service on June 12, 1991. CBO estimates that this bill would result in annual costs of less than $500,000 to the federal government for fiscal years 1991 through 1996 and would result in no costs to state and local governments. This bill would not affect direct spending or receipts, so there would be no pay-as-you-go scoring under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

H.R. 1341 would require that federal employees subject to release under a reduction-in-force action receive written notice at least 60 days before the scheduled date of release. In addition, the bill would require that written notice of scheduled releases be provided to the appropriate state dislocated worker units or the chief elected

officials of such units or of appropriate units of local government. The bill would allow the President to shorten the required period of advance notice because of circumstances not reasonably foreseeable. The bill also would require the Office of Personnel Management (OPM) to promulgate necessary regulations.

CBO estimates that the requirements to draft regulations and implement other administrative reporting requirements would result in small administrative costs since the OPM intends to develop administrative requirements similar to those in H.R. 1341. OPM has already developed preliminary regulations that contain requirements similar to those set forth in the bill and thus would not need to devote substantial effort to promulgating regulations based on this bill. Also, CBO estimates that there would be few, if any, situations in which an employee would remain with the federal government beyond a scheduled release date in order to meet the 60-day notification requirement and thus receive additional federal payment for salary. Since federal agencies are usually aware of impending reduction-in-force actions well in advance of the actual dates of employee release, they would usually be able to meet the sixty day notification requirement without adjusting the release dates of employees. Thus, CBO believe such situations would not result in significant costs to the federal government. Finally, CBO estimates that the bill would not affect the number of reduction-in-force actions in the federal government, since the requirements of the bill would not impose restrictions that would require agencies to alter significantly their current procedures.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Patricia Conroy, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

OVERSIGHT

Under the rules of the Committee on Post Office and Civil Service, the Subcommittee on Human Resources is vested with legislative and oversight jurisdiction over the subject matter of this legislation. As a result of its hearings and deliberations, the subcommittee has concluded that there is ample need and justification for enacting this legislation.

The subcommittee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to section 4(c)(2) of House rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of House rule XI, the committee has concluded that the enactment of H.R. 1341, as amended by the committee, will have no inflationary impact on the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 3502 OF TITLE 5, UNITED STATES CODE

§ 3502. Order of retention

(a) * * *

* * * * * * *

(d)(1) Except as provided under subsection (e), an employee may not be released, due to a reduction in force, unless—

(A) such employee and such employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (2), at least 60 days before such employee is so released; and

(B) if the reduction in force would involve the separation of a significant number of employees, the requirements of paragraph (3) are met at least 60 days before any employee is so released.

(2) Any notice under paragraph (1)(A) shall include—

(A) the personnel action to be taken with respect to the employee involved;

(B) the effective date of the action;

(C) a description of the procedures applicable in identifying employees for release;

(D) the employee's ranking relative to other competing employees, and how that ranking was determined; and

(E) a description of any appeal or other rights which may be available.

(3) Notice under paragraph (1)(B)—

(A) shall be given to—

(i) the appropriate State dislocated worker unit or units (referred to in section 311(b)(2) of the Job Training Partnership Act); and

(ii) the chief elected official of such unit or each of such units of local government as may be appropriate; and

(B) shall consist of written notification as to—

(i) the number of employees to be separated from service due to the reduction in force (broken down by geographic area or on such other basis as may be required under paragraph (4));

(ii) when those separations will occur; and

(iii) any other matter which might facilitate the delivery of rapid response assistance or other services under the Job Training Partnership Act.

(4) The Office shall prescribe such regulations as may be necessary to carry out this subsection. The Office shall consult with the Secretary of Labor on matters relating to the Job Training Partnership Act.

(e)(1) Subject to paragraph (3), upon request submitted under paragraph (2), the President may, in writing, shorten the period of ad-

vance notice required under subsection (d)(1)(A) and (B), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(2) A request to shorten notice periods shall be submitted to the President by the head of the agency involved, and shall indicate the reduction in force to which the request pertains, the number of days by which the agency head requests that the periods be shortened, and the reasons why the request is necessary.

(3) No notice period may be shortened to less than 30 days under this subsection.

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